

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Otter Tail Power Company for
Authority to Increase Electric Service
Rates in Minnesota

**SECOND PREHEARING
ORDER**

This matter came before Administrative Law Judge Kathleen D. Sheehy on the motion to intervene of Missouri Basin Municipal Power Agency, doing business as Missouri River Energy Services (MRES). MRES filed its Petition to Intervene on April 27, 2010, and it filed a brief in support of its petition on July 23, 2010. Otter Tail Power filed an objection to the intervention petition on May 7, 2010, and it filed a responsive memorandum on August 11, 2010, at which time the motion record closed.

Bruce Gerhardson, Associate General Counsel, Otter Tail Power Company, 215 South Cascade Street, P.O. Box 496, Fergus Falls, MN 56538-0496, appeared for Otter Tail Power Company (Applicant, Otter Tail, or OTP). William Taylor, Attorney at Law, Woods, Fuller, Shultz & Smith P.C., P.O. Box 5027, Sioux Falls, SD 57117-5027, appeared on behalf of MRES.

Based upon the record, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

ORDER

1. The motion of MRES to intervene as a party is DENIED; however, it may participate in this proceeding as a member of the public under Minn. R. 1400.6200, subp. 5;

2. William Taylor is admitted to practice as counsel for MRES to participate in this matter and all proceedings associated therewith, and he need not be accompanied by counsel admitted to practice in Minnesota; and

3. The Petition for Intervention of International Brotherhood of Electrical Workers (Local Union 949) as a party is GRANTED.

Dated: September 1, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

MRES is a joint action agency, formed under Iowa law, and headquartered in Sioux Falls, South Dakota. Its members are 60 municipalities located in Iowa, South Dakota, North Dakota, and Minnesota. Twenty-four of the municipalities are located in Minnesota. MRES acquires and supplies the electrical power and energy required to meet the needs of those communities. The same 24 municipalities are members of Western Minnesota Municipal Power Agency (Western Minnesota), which owns the generating and transmission facilities used to provide the power. By contract, MRES buys the output of Western Minnesota-owned generating facilities.

In 1986, MRES, Western Minnesota, and Otter Tail Power Company entered into an agreement for the establishment, planning, utilization, operation, and joint ownership of the Integrated Transmission System (ITS) that delivers energy to ten MRES and nine Western Minnesota municipalities. Through an Integrated Transmission Agreement (ITA), Otter Tail Power operates and manages the ITS and periodically bills MRES and Western Minnesota for its share of the operational and management expense.¹ The ITA is a FERC-filed agreement, the terms of which are under the exclusive jurisdiction of FERC.² The ITA contains specific dispute resolution procedures and a mandatory arbitration provision for any “controversy, claim, counterclaim, dispute, difference, or misunderstanding arising out of or relating to [the ITA] or the breach thereof,” except for matters falling within the exclusive jurisdiction of the FERC.³

MRES originally argued that there were two bases for intervention in this rate case. First, it contended that there were disputes, or at least potential disputes, concerning Otter Tail Power’s operation and management charges for the ITS in recent years. It argued that this rate case was an appropriate forum for those charges and computations to be examined, because the Commission’s decision with regard to retail rates would be “indirect approval” of the propriety of the operation and maintenance charges assessed to ITS owners. Second, it contended that Western Minnesota, as a participant in the Big Stone II project, had an interest in advocating how certain capital assets acquired for the project would be divided among the participants. By letter dated August 9, 2010, MRES advised that all issues concerning the division of those assets and the accounting of funds used in the project had been resolved and would not be at issue in this docket.⁴ Accordingly, the only remaining issue is whether MRES should be allowed to intervene because of its interest in determining the propriety of Otter Tail Power’s operating and management charges under the ITA.

¹ Brief of MRES at pages 1-3.

² Otter Tail Power Responsive Memorandum at 2.

³ *Id.* at 3.

⁴ Letter from William Taylor to ALJ (Aug. 9, 2010).

Minn. R. 1400.6200, subp. 1 (2009), provides as follows:

The petition [for intervention] shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case; shall show how the petitioner may be directly affected by the outcome or that petitioner's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate petitioner's statutory right to intervene if one should exist.

The Administrative Law Judge shall allow intervention, upon a proper showing pursuant to subpart 1 above, unless the judge finds that the petitioner's interest is adequately represented by one or more parties participating in the case.⁵

MRES agrees that no decision the Commission makes in this rate case with regard to the amount of operating or management expenses under the ITA would be binding on MRES.⁶ The Commission will decide only whether the expenses or revenues attributable to the ITA are appropriate from the perspective of ratepayers. MRES argues, however, that the Commission's approval of a rate that includes as a component the revenues or expenses pertaining to the ITA would constitute "indirect" approval of those charges.

The Administrative Law Judge concludes MRES has failed to show that its legal rights, duties, or privileges would be affected in any way by the issues in this contested case hearing. It will be affected only indirectly, if at all, by the outcome of this case. The petition for intervention is accordingly DENIED. The participation of MRES in this case as a member of the public, however, is permissible under Minn. R. 1400.6200, subp. 5 (2009). A participant may provide testimony, offer exhibits, and question witnesses. This level of involvement is appropriate to address the issue whether revenues and expenses relating to the ITA are properly reflected in the case, from the perspective of retail ratepayers (as opposed to the perspective of a partner to the ITA).

In addition, on August 5, 2010, the International Brotherhood of Electrical Workers (IBEW) (Local Union 949) filed an untimely petition to intervene; on August 19, 2010, Otter Tail Power advised it had no objection to the petition. The Union is the certified representative of 250 bargaining unit employees of Otter Tail Power, whose interests may well be directly affected by the outcome of the rate case. The petition to intervene by IBEW Local Union 949 is therefore GRANTED.

K.D.S.

⁵ Minn. R. 1400.6200, subp. 3.

⁶ Transcript of Prehearing Conference at 14 (June 22, 2010).